

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE MERRILL LYNCH & CO., INC. :  
RESEARCH REPORTS SECURITIES LITIGATION : 02 MDL 1484  
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IN RE MORGAN STANLEY DEAN WITTER & CO. :  
INKTOMI CORPORATION :  
RESEARCH REPORTS SECURITIES LITIGATION : 02 CV 7388  
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**CASE MANAGEMENT ORDER NO. 3**

**I. LEAD PLAINTIFFS**

On December 9, 2002, this Court entered the first Case Management Order in this litigation, which directed, among other things, the consolidation of actions brought by shareholders of the same securities issuer. In each of these consolidated actions, those shareholders who wish to be appointed Lead Plaintiff have now submitted their respective motions and supporting documentation to the Court. In accordance with its statutory obligations under the Private Securities Litigation Reform Act of 1995 (PSLRA), the Court hereby adopts a presumption that the following plaintiffs—who, in the determination of the Court, have the largest financial interest in the relief sought by their respective classes, and who, the Court finds, otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure—are the most adequate plaintiffs for their respective consolidated actions:

<b><u>Consolidated Action</u></b>	<b><u>Presumptive Most Adequate Plaintiff</u></b>
(1) 24/7 Real Media, Inc., 02-CV-3210	<b>John Kilgour Lentell</b>
(2) Aether Systems Inc., 02-CV-3429	<b>Steven Roth</b>
(3) B2B HOLDRs, 02-CV-5002	<b>Huimin Qu</b>
(4) CMGI Inc., 02-CV-7218	<b>Stephen &amp; Amy Kurtzman</b>
(5) eToys Inc., 02-CV-6645	<b>Dennis Fortin</b>
(6) Excite@Home, 02-CV-3042	<b>Fred Kaplan</b>
(7) Exodus Communications, Inc., 02-CV-6914	<b>Paolo Orlandi</b>

**Consolidated Action**

- (8) Global Technology Fund, 02-CV-7854
- (9) GoTo.com, 02-CV-3835
- (10) Inktomi Corporation, 02-CV-6916
- (11) Inktomi Corporation, 02-CV-7388
- (12) Interliant, Inc., 02-CV-3321
- (13) Internet Architecture HOLDRs  
02-CV-3606
- (14) Internet Capital Group, Inc.,  
02-CV-3050
- (15) Internet HOLDRs, 02-CV-5961
- (16) Internet Infrastructure HOLDRs,  
02-CV-4242
- (17) Internet Strategies Fund, 02-CV-3176
- (18) iVillage Inc., 02-CV-6637
- (19) Lifeminders, 02-CV-9852
- (20) LookSmart, Ltd., 02-CV-7739
- (21) Openwave Systems, Inc., 02-CV-3252
- (22) Pets.com, Inc., 02-CV-3634
- (23) Quokka Sports, Inc., 02-CV-7585  
Class of Common Stock Purchasers  
Class of 7% Notes Purchasers
- (24) Rhythms Net Connections, Inc.,  
02-CV-6913
- (25) Shareholders, 02-CV-5097

**Presumptive Most Adequate Plaintiff**

**Michal N. Merritt**

**Victor Parker**

**Ian Kideys**

**Ian Kideys**

**Brett & Juliet Raynes**

**Charles J. Lucker**

**Shrubhro & Mary Sen**

**Dennis White**

**Quentin Kapke**

**Ruth Manton**

**John Korte**

**William T. Sharp**

**George Sobolew**

**Robert Shaheen**

**Stephen E. Carter**

**Alex Miceli**  
**Cranshire Capital, L.P.**

**John Horoshak**

**J. Marvin Brown**

Now, therefore, it is ORDERED That:

The Court has given interested plaintiffs in each class an opportunity to rebut the presumption of most adequate plaintiff in each of these consolidated actions. In accordance with the requirements of the PSLRA, the Court hereby appoints each of the most adequate plaintiffs listed above as Lead Plaintiff in his or her respective consolidated action. This Appointment is

subject to later modification or revision by the Court.

## **II. LEAD COUNSEL**

The most adequate plaintiffs listed in Part I of this Order seek the Court's approval for their choices of Lead Counsel as follows:

<b><u>Consolidated Action</u></b>	<b><u>Lead Counsel</u></b>
(1) 24/7 Real Media, Inc., 02-CV-3210	<i>Finkelstein, Thompson &amp; Loughran</i>
(2) Aether Systems Inc., 02-CV-3429	<i>Rabin &amp; Peckel</i>
(3) B2B HOLDERS, 02-CV-5002	<i>Weiss &amp; Yourman</i>
(4) CMGI Inc., 02-CV-7218	<i>Rabin &amp; Peckel</i>
(5) eToys Inc., 02-CV-6645	<i>Weiss &amp; Yourman</i>
(6) Excite@Home, 02-CV-3042	<i>Kaplan Fox &amp; Kilsheimer</i>
(7) Exodus Communications, Inc., 02-CV-6914	<i>Rabin &amp; Peckel</i>
(8) Global Technology Fund, 02-CV-7854	<i>Wolf Haldenstein Adler Freeman &amp; Herz</i>
(9) GoTo.com, 02-CV-3835	<i>Pomerantz Haudek Block Grossman &amp; Gross</i>
(10) Inktomi Corporation, 02-CV-6916	<i>Pomerantz Haudek Block Grossman &amp; Gross</i>
(11) Inktomi Corporation, 02-CV-7388	<i>Pomerantz Haudek Block Grossman &amp; Gross</i>
(12) Interliant, Inc., 02-CV-3321	<i>Cohen, Milstein, Hausfeld &amp; Toll</i>
(13) Internet Architecture HOLDERS 02-CV-3606	<i>Kaplan Fox &amp; Kilsheimer</i>
(14) Internet Capital Group, Inc., 02-CV-3050	<i>Shapiro, Haber &amp; Urmy</i>
(15) Internet HOLDERS, 02-CV-5961	<i>Rabin &amp; Peckel</i>
(16) Internet Infrastructure HOLDERS, 02-CV-4242	<i>Kaplan Fox &amp; Kilsheimer</i>
(17) Internet Strategies Fund, 02-CV-3176	<i>Abbey Gardy</i>

**Consolidated Action**

- (18) iVillage Inc., 02-CV-6637
- (19) Lifeminders, 02-CV-9852
- (20) LookSmart, Ltd., 02-CV-7739
- (21) Openwave Systems, Inc.,  
02-CV-3252
- (22) Pets.com, Inc., 02-CV-3634
- (23) Quokka Sports, Inc., 02-CV-7585  
Class of Common Stock Purchasers  
Class of 7% Notes Purchasers
- (24) Rhythms Net Connections,  
Inc., 02-CV-6913
- (25) Shareholders, 02-CV-5097

**Lead Counsel**

- Finkelstein, Thompson & Loughran*
- Cohen, Milstein, Hausfeld & Toll*
- Finkelstein, Thompson & Loughran*
- Rabin & Peckel*
- Weiss & Yourman*
- Finkelstein, Thompson & Loughran*  
*Much Shelist Freed Denenberg Ament & R.*
- Beatie & Osborn*
- Berger & Montague*

**And, it is further ORDERED That:**

(1) The Court hereby approves each of the above-listed choices of Lead Counsel. This approval is subject to later modification or revision by the Court.

(2) Plaintiffs' Lead Counsel shall be organized into a Plaintiffs' Executive Committee (Executive Committee). The Court retains full discretion to reconsider and reconstitute the membership of the Executive Committee. The present members of the Executive Committee shall be the following law firms: *Abbey Gardy; Beatie & Osborn; Berger & Montague; Cohen, Milstein, Hausfeld & Toll; Finkelstein, Thompson & Loughran; Kaplan Fox & Kilsheimer; Much Shelist Freed Denenberg Ament & Rubenstein; Pomerantz Haudek Block Grossman & Gross; Rabin & Peckel; Shapiro, Haber & Urmy; Weiss & Yourman; and Wolf Haldenstein Adler Freeman & Herz*. The Court hereby appoints Edward F. Haber of *Shapiro Haber & Urmy*, Herbert Milstein of *Cohen, Milstein, Hausfeld & Toll*, and Jacqueline Sailer of *Rabin & Peckel* as Chairmen of the Executive Committee. The Court appoints Frederic S. Fox of *Kaplan Fox & Kilsheimer* as Plaintiffs' Liaison Counsel.

(3) The Executive Committee, under the direction of its Chairmen and Plaintiffs' Liaison Counsel, shall be responsible for the interim coordinated prosecution of the Merrill Lynch

Research Reports Securities Litigation and shall assume the following duties in connection with this litigation:

- (a) present the positions of plaintiffs at Court conferences and hearings;
- (b) delegate work assignments with the object of making efficient use of plaintiffs' counsel's resources;
- (c) coordinate and direct the briefing and argument of motions;
- (d) convene meetings of plaintiffs' counsel as necessary and appropriate from time to time;
- (e) enter into stipulations with opposing counsel; and
- (f) maintain the master service list.

(4) In addition to the functions set forth above, Plaintiffs' Liaison Counsel shall receive and distribute notices or orders from the Court and shall function as a primary contact between Plaintiffs' counsel and Defendants' counsel. Service by the Defendants on Plaintiffs' Liaison Counsel shall be deemed service on all Plaintiffs' Lead Counsel.

(5) Counsel should be advised that this Court does not look favorably upon and will not permit double-charging by multiple firms or local counsel for the same work or representation. Each counsel that has been appointed Lead Counsel must maintain complete and accurate records of all time charges pertaining to its representation in this litigation and file those records quarterly with Plaintiffs' Liaison Counsel, with copies furnished to the Court in camera. This record-keeping and reporting requirement is in addition to any other such requirements that may be imposed by law and commences as of the date of this Order. Reports for quarters ending March 31, June 30, September 30, and December 31 will be due on the fifteenth of the month following.

(6) The provisions outlined in paragraphs (2) through (5) above, relating to the Executive Committee and its structure and duties, shall not apply to the Morgan-Stanley Inktomi Corporation action, 02 CV 7388.

### **III. CONSOLIDATED AMENDED COMPLAINTS**

It is further ORDERED That:

Within 21 days of the date of this Order, by Wednesday, February 26, consolidated amended complaints shall be filed by the Lead Counsel that have been appointed in this Order, with a courtesy copy of each complaint submitted to Chambers. Each counsel who has been appointed Lead Counsel in a particular consolidated action is responsible for obtaining the necessary information such that the consolidated amended complaint filed for that case will comply with the pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure and the PSLRA, in particular 15 U.S.C. § 78u-4(b)(1) & (2). The factual allegations must be specific to the security in question and should clearly allege who said what to whom concerning that particular security. Consolidated amended complaints should also be carefully framed in order that they may fully comply with all applicable law regarding the pleading of loss causation.

### **IV. OTHER MATTERS**

(1) All counsel are reminded of this Court's statutory obligation, upon final adjudication of this litigation, to make specific findings upon the record regarding the compliance of every party and attorney with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure with respect to any complaint, responsive pleading, or dispositive motion. Any violations found are subject to appropriate sanctions. 15 U.S.C. § 78u-4(c).

(2) All counsel are advised to monitor the internet website of the U.S. District Court for the Southern District of New York, available at <http://www.nysd.uscourts.gov/>, under the link titled *Multidistrict Litigation – In re Merrill Lynch & Co., Inc.*, if they wish to obtain up-to-date Orders and other information pertaining to this litigation.

Dated: February 5, 2003.

MILTON POLLACK  
SENIOR UNITED STATES DISTRICT JUDGE